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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/504,000	02/14/2000	Brent C. Parent	65,678-0004 (DCCIE 5297)	7392
27210 7590 06/07/2007 MACMILLAN, SOBANSKI & TODD, LLC ONE MARITIME PLAZA - FIFTH FLOOR 720 WATER STREET TOLEDO, OH 43604			EXAMINER PATEL, JAGDISH	
			ART UNIT 3693	PAPER NUMBER
			MAIL DATE 06/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/504,000	PARENT ET AL.	
	Examiner	Art Unit	
	JAGDISH PATEL	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is in response to amendment filed 3/7/07.

Response to Amendment

2. Claims 1-22 are currently pending.. Claims 1, 6, 22 have been amended responsive to the amendment filed 3/7/07. The examiner has fully considered the pending claims for allowability of the pending claims. However, upon further review of the pending claims, it has been determined that the system claims, where as directed to “simulated fleet” are not patentably designable from the Pisula reference cited before (see office action dated 7/22/05).

Examiner’s Note: the applicant is reminded to amend claim 22 for typographic error (replace “pre-existent” with “pre-existing”).

Claim Rejections - 35 USC § 112

3. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (exemplary system claim 16 discussed).
4. Claim 16 recites that a fleet database, a market database, a simulated fleet configuration and a reporting and analysis module are all provided on their respective computers. There is no links provided amongst the individual computers and the simulated fleet. Is the “simulated fleet” a part of the system. It is suggested that all system claims provide (i) proper relationship among

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the elements such as a communication links if implemented on separate computers and (ii) define “simulated fleet” as a component of the system of the independent claims.

5. Claim 19 recites step (D) as selecting a first piece of industrial equipment for inclusion in said simulated fleet .. However, the method fails to provide sufficient and proper antecedent basis for limitation “said simulation fleet” , since this limitation only appears in the preamble. For example, no relationship can be established among the various databases recited in the claim and the simulated fleet. Furthermore, step (D) merely recites selecting a first piece of industrial equipment .. and further selecting a second piece of equipment based on data from one of the market database, ...without clearly specifying what these selected pieces have to with the simulated fleet because the report generating step has no connection with the term “simulated fleet”. Please provide explanation or amend the claim to sufficiently clarify this ambiguity.

Claim Rejections - 35 USC § 102

6. Claims 1, 2 and 22 are rejected under 35 U.S.C. 102(a) as being anticipated by Pisula et al. (WO 99/06934) (hereafter Pisula).

Regarding claims 1-2 and 22, Pisula discloses an electronic system which is capable of modeling a simulated fleet as recited in the subject claims. According to MPEP (see section 2111 [R-5] Claim Interpretation; Broadest Reasonable Interpretation) if a reference apparatus is capable of performing the intended functionality of the claimed apparatus then it reads on the claimed invention.

During examination, statements in the preamble reciting the purpose or intended use of the claimed invention must be evaluated to determine whether the recited purpose or

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intended use results in a structural difference (or, in the case of process claims, manipulative difference) between the claimed invention and the prior art. If so, the recitation serves to limit the claim. See, e.g., *In re Otto*, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963) (The claims were directed to a core member for hair curlers and a process of making a core member for hair curlers. Court held that the intended use of hair curling was of no significance to the structure and process of making.); *In re Sinex*, 309 F.2d 488, 492, 135 USPQ 302, 305 (CCPA 1962) (statement of intended use in an apparatus claim did not distinguish over the prior art apparatus). **If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim.** See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997) (anticipation rejection affirmed based on Board's factual finding that the reference dispenser (a spout disclosed as useful for purposes such as dispensing oil from an oil can) would be capable of dispensing popcorn in the manner set forth in appellant's claim 1 (a dispensing top for dispensing popcorn in a specified manner)) and cases cited therein. See also MPEP § 2112 - § 2112.02

Per claims 1-2 and 22 Pisula teaches an electronic system for modeling a fleet which comprises a simulated fleet configuration unit (Fig 4 and 5, p. 6 a fleet updating feature which provides the user to add equipment from their pools), a reporting and analysis module (see p.6 inventory reports) and a communication interface to facilitate electronic remote access (the Pisula system is implemented and accessible over the Internet see p. 2). The simulated fleet configuration unit comprises at least the fleet builder module including a step-by-step entry system (Fig. 5, p. 6, L 15+).

It is asserted Pisula is capable of (i) allowing a user to add one or more assets to the simulated fleet (ii) generating a report having a composite output that corresponds to a parameter of the assets and is remotely accessible to a user as shown in the foregoing paragraph.

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Therefore, Pisula reads on the claimed invention. Alternatively is stated that the fleet being simulated or real does not effect the structure of the system claims.

Allowable Subject Matter

7. Claims 3-15 are objected to as being dependent upon a rejected base claim, but would be allowable if (i) rewritten in independent form including all of the limitations of the base claim and any intervening claims and (ii) amended in view of the issues raised under 35 USC 112 (second). Claims 16-21 are deemed allowable subject to amendments to resolve issues raised under 35 USC 112 (second).

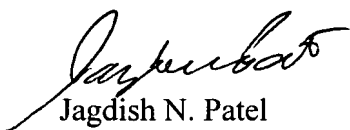
Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on **800AM-630PM Mon-Tue and Thu.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **KRAMER JAMES A** can be reached on **(571)272-6783**. The fax phone number for the organization where this application or proceeding is assigned is 517-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3693)

5/29/07